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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CHARLENE RICKERT,

Plaintiff and Appellant,

v.

AMERICAN HONDA MOTOR
CO., INC., ET AL.,

Defendants and Respondents.

B289888

Los Angeles County
Super. Ct. No. BC685628

APPEAL from a judgment of the Superior Court of Los Angeles County, Steven J. Kleifield, Judge. Affirmed.

Karst & Von Oiste LLP, George H. Kim for Plaintiff and Appellant Charlene Rickert.

Schnader Harrison Segal & Lewis LLP, Craig L. Hodgson for Defendants and Respondents American Honda Motor Co., Inc. and Yamaha Motor Corporation, U.S.A.; Berkes Crane Robinson & Seal LLP, Viuu Spangler Khare for Defendant and Respondent Kawasaki Motors Corp., U.S.A.

INTRODUCTION AND FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff and Appellant Charlene Rickert, a Wisconsin resident, serves as the personal representative of the Estate of Gary Staszewski. She alleges that Staszewski, who also lived in Wisconsin, developed mesothelioma and eventually died from his exposure to asbestos fibers. Her wrongful death suit alleges Staszewski's asbestos exposure resulted from his work, in his home state, on asbestos-containing brakes, clutches, and gaskets made, sold, or distributed by Defendants and Respondents American Honda Motor Co., Yamaha Motor Corp., U.S.A., and Kawasaki Motors Corp., U.S.A.¹

Although all parties concede Wisconsin is a suitable forum, neither Staszewski nor Rickert ever filed suit there. Instead, Staszewski originally brought a personal injury suit in Missouri. After Staszewski passed away, Rickert filed a wrongful death suit, also in Missouri. She later voluntarily dismissed her Missouri case, however, and filed this suit. The case was added onto the LAOSD Asbestos Cases, Judicial Council Coordination Proceeding No. 4674, which handles pretrial proceedings for all asbestos inhalation personal injury and wrongful death cases originally filed in Los Angeles, Orange, and San Diego Counties.

Respondents sought dismissal or stay of the California case on a theory of forum non conveniens. Following briefing and a hearing, the Coordination Judge ordered the case stayed pending the outcome of whatever action Rickert might file in Wisconsin.

¹ The lawsuit also named as defendants Suzuki Motor of America, Inc., and Vance & Hines. Neither is a party to this appeal.

The Coordination Judge weighed the applicable private and public factors and concluded California has little interest in this case because the asbestos exposure and Staszewski's medical treatment occurred exclusively in Wisconsin, and Staszewski was a Wisconsin resident. Witnesses needed by the plaintiff to prove exposure and damages would most likely be located in Wisconsin. Although defendants maintain corporate headquarters in California, neither side identified particular witnesses on the defense side, nor did they know where they resided. But as the Coordination Judge noted, once identified, the witnesses could be deposed and their depositions used at trial.

Appellant contends, incorrectly, the Coordination Judge misapprehended the applicable legal test, and abused his discretion. Division Five of this Court comprehensively addressed and clarified the standards to be applied by a California trial court that intends to stay (rather than dismiss) a California case brought by a resident of another state on grounds of forum non conveniens. (*National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902) (*NFL*). Because the Coordination Judge exercised his discretion in conformity with *NFL*, and we see no reason to reexamine, restate, or deviate from that decision, we affirm.

APPLICABLE LEGAL PRINCIPLES AND STANDARD OF REVIEW

NFL, supra, 216 Cal.App.4th 902, summarized the applicable legal principles and standard of review as follows:

“When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or

dismiss the action in whole or in part on any conditions that may be just.’ (Code Civ. Proc., § 410.30, subd. (a).) [I]n California, forum non conveniens motions are governed by statute, not by policies embedded in case law predating the statute’s enactment.

“A trial court considering a forum non conveniens issue engages in a two-step process; the first step is to determine whether a suitable alternative forum exists. Where there is a suitable alternative forum, the court proceeds to the next step, consideration of the private interests of the parties and the public interest in keeping the case in California.

“The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The residences of the plaintiff and the defendant are relevant, and a corporate defendant’s principal place of business is presumptively a convenient forum. If the plaintiff is a California resident, the plaintiff’s choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant. The public interest factors include avoidance of overburdening California courts, protecting potential jurors who should not be called on to decide cases in which the local community has little concern, and weighing the competing ties of California and the alternate jurisdiction to the litigation.

“The defendant, as the moving party, bears the burden of proof on a motion based on forum non conveniens. It is the trial court’s duty to weigh and interpret evidence and draw reasonable inferences therefrom.

“Had the suitability of an alternate forum been disputed . . . , the trial court’s ruling on that point would have been subject to either a de novo or substantial evidence review on appeal. However, there is no dispute here that [Wisconsin] is a suitable alternate forum.

“[¶ . . . ¶]

“The second part of the analysis, the weighing and balancing of private and public factors, is reviewed pursuant to an abuse of discretion standard; substantial deference is accorded the trial court’s ruling. We will only interfere with a trial court’s exercise of discretion where we find that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could have reasonably reached the challenged result. As long as there exists a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be . . . set aside . . .

“The Court of Appeal cannot reweigh the evidence or draw contrary inferences. We presume the trial court found every fact and drew every reasonable inference necessary to support its determination. We cannot reject evidence accepted by the trial court as true unless it is physically impossible or its falsity is obvious without resort to inferences or deduction.” (*NFL, supra*, 216 Cal.App.4th at p. 917-918 (case citations and some internal quotations omitted).

In this case, if anything, our review is even more deferential. Through his assignment, the Coordination Judge necessarily had a well-informed understanding of the characteristics of asbestos-related wrongful death cases and how the private and public factors to be considered when evaluating a forum non conveniens motion apply to such cases. We therefore

are particularly disinclined to disturb the trial court's discretionary ruling.

DISCUSSION

A. The Trial Court Applied the Correct Legal Standard

In this case, as in *NFL, supra*, 216 Cal.App.4th 902, the first step of the two-step analysis was unnecessary because the parties agreed the plaintiff's home state is a suitable alternative forum.

As for the second step, the Coordination Judge properly considered the public and private interest factors. For example, the Coordination Judge considered private factors such as the ease of obtaining proof. Rickert's counsel argued it would be easier to compel defendant's witnesses to appear at trial in California, but did not identify by name or state of residency any defense witness with knowledge relating to Rickert's claims. In any event, the Coordination Judge observed that deposition testimony could be obtained and used at trial, wherever that trial may be. Also, the Coordination Judge discussed the possibility of requiring the attendance at trial of a corporate representative, but noted neither side had provided him with Wisconsin law on the subject. Finally, proof issues were implicit in the Coordination Judge's observation that "everything" — including all of Staszewski's exposure to asbestos — took place in Wisconsin.

The Coordination Judge expressly considered the public interest factors. After hearing arguments, the court asked Rickert's counsel: "What interest do Los Angeles jurors have in this case where the entire conduct, the entire exposure, the residency of the plaintiff, everything that I can see in this

case, . . . why should Los Angeles jurors adjudicate a case where everything happened in Wisconsin?” When Rickert’s counsel responded that defendant companies’ principal places of business are in California, and the citizens of California have an interest in regulating the conduct of its corporate citizens, the Coordination Judge responded: “. . . I still think that Wisconsin has much more of an interest in regulating the conduct that occurs there as opposed to California having an interest in regulating conduct that occurred in Wisconsin It’s the public and private factors.” The court concluded the only factor that weighed in favor of keeping the case in California is that some of the defendants are located in California. The Coordination Judge summarized, “I am convinced that this is precisely the type of case where a forum non-conveniens motion should be granted. The case should be pursued in Wisconsin.” He therefore granted the motion to stay.

Rickert argues the moving parties were required to show California was a “seriously inconvenient” forum, as set forth in *Ford Motor Co. v. Insurance Co. of North America* (1995) 35 Cal.App.4th 604 (*Ford*.) But as *NFL* explained, *Ford*’s “seriously inconvenient” standard applies — if at all — only when the trial court dismisses, rather than stays, a case in response to a forum non conveniens motion. (*NFL, supra*, 216 Cal.App.4th at pp. 929-931; *Ford, supra*, 35 Cal App 4th 604 at p. 607.) Like the *NFL* court, we decline to follow cases that applied *Ford*’s “seriously inconvenient forum” language to cases that were stayed rather than dismissed. (*NFL, supra*, 216 Cal.App.4th at p. 933 [disagreeing with *In re Marriage of Taschen* (2005) 134 Cal.App.4th 681, *Morris v. AGFA Corp* (2006) 144 Cal.App.4th 1452, and *Hansen v. Owens-Corning Fiberglas Corp.*, (1996) 51

Cal.App.4th 753 to the extent they impose the “seriously inconvenient” burden on parties moving for a mere stay based on forum non conveniens].)

Moreover, *Fox Factory Inc. v. Superior Court* (2017) 11 Cal.App.5th 197, 205-207 (*Fox Factory*) flatly rejected Rickert’s argument. Relying in part on *NFL, supra*, 216 Cal.App.4th 902, the court refused to apply *Ford*’s “seriously inconvenient” standard in a case brought by a non-California resident, rejecting “plaintiff’s implicit suggestion that in every case great weight is required to overcome a nonresident plaintiff’s forum choice.” (*Fox Factory, supra*, 11 Cal.App.5th at p. 207.) Indeed, the *Fox Factory* court concluded: “Even if we were reviewing a *dismissal* order in a suit brought by a *California* resident – we would not subscribe to the analysis employed in *Ford*.” (*Ibid.*, italics in original.)

Rickert argues *NFL, supra*, 216 Cal.App.4th 902, is wrong because it is inconsistent with *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744. We see no inconsistency. *Stangvik* affirmed the granting of a forum non conveniens motion in a case brought by Scandinavian plaintiffs against a California heart valve manufacturer. The Supreme Court observed, “the fact that plaintiffs chose to file their complaint in California is not a substantial factor in favor of retaining jurisdiction here.” (*Id* at p. 755; see also *Fox Factory, supra*, 11 Cal.App.5th at pp. 205-207 [applying *Ford*’s “seriously inconvenient” standard to suit brought by non-resident would be inconsistent with *Stangvik*; *NFL* provides correct analysis].)

Rickert also contends the court applied an incorrect standard by merely considering whether Wisconsin was a “better” or “more convenient” forum than California. This argument is based on a gross misstatement of the record. In her opening

brief, Rickert quotes the following excerpt of the Reporter's Transcript of the hearing:

THE COURT: What is the standard to be applied in this case?

MR. EBERLEIN [Defense Counsel]: More convenient.

The brief then says, "The trial court agreed." But as the Reporter's Transcript reveals, the Coordination Judge did not express agreement. Instead, he said:

THE COURT: Well, I'm just asking you. Plaintiff's counsel started by – he said substantially inconvenient. I think what he meant to say was seriously inconvenient.

At no point did the court state, as Rickert suggests, it was granting the motion simply because Wisconsin was a "better" forum. Rather, as discussed above, the court weighed the private and public interests as the standard requires. For this reason, we also reject Rickert's argument the court reversed the burden of proof. Nothing in the record suggests the court placed the burden on Rickert.

**B. The Trial Court Did Not Abuse Its Discretion in
Concluding the Public and Private Interest Factors
Warranted Granting the Motion to Stay**

Rickert next argues the trial court abused its discretion when analyzing the private and public factors. We disagree and decline Rickert's implicit invitation to engage in *de novo* review. We conclude the Coordination Judge was well within his sound discretion to grant the motion.

DISPOSITION

The order is affirmed. Respondents are awarded their costs on appeal.

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CURREY, J.

WE CONCUR:

MANELLA, P. J.

COLLINS, J.